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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY

IN THE MATTER OF THE SUSPENSION : Administrative Action
OR REVOCATION OF THE LICENSE OF :
 :
 :
 Carlo J. Porcaro, D.M.D. : FINAL ORDER OF DISCIPLINE
License No. 22DI01844300 :
 :
 :
 TO PRACTICE DENTISTRY :
IN THE STATE OF NEW JERSEY :

This matter was opened to the New Jersey State Board of Dentistry upon receipt of information concerning Carlo J. Porcaro, D.M.D. ("Dr. Porcaro" or "Respondent"), which the Board has reviewed and on which the following findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. The Board issued Dr. Porcaro a license to practice dentistry in New Jersey on November 24, 1992. He has been licensed to practice at all times relevant to these proceedings.

2. The Board has the authority to exercise investigative powers including examination of records maintained in the practice of the profession. N.J.S.A. 45:1-18.

3. Licensees of the Board have a duty to cooperate with Board inquiries. N.J.A.C. 13:45C-1.2(a).

4. Failure to cooperate with a Board inquiry may be deemed professional misconduct and/or a violation of the Board's enabling act. N.J.A.C. 13:45C-1.2(b). Failure to make a proper and timely response by way of appearance or production of documents to any

subpoena issued pursuant to N.J.S.A. 45:1-18 is specifically deemed failure to cooperate. N.J.A.C. 13:45C-1.3(a)(6).

5. On June 20, 2012, the Board issued a subpoena to Dr. Porcaro demanding his appearance before the Board on July 25, 2012, at which time he was to produce original patient records for three individuals. In lieu of the appearance on July 25, 2102, the subpoena offered respondent, at his option and expense, the opportunity to produce certified true copies of the demanded records on or before July 3, 2012.

6. The subpoena was sent by certified mail, return receipt requested, on June 20, 2012. The return receipt card was received by the Board indicating delivery to Dr. Porcaro's office on June 22, 2012.

7. Respondent offered no explanation for his failure to timely provide certified true copies of the demanded items by July 3, 2012, or for his failure to appear on July 25, 2012, the return date of the subpoena.

CONCLUSIONS OF LAW

The above findings of fact provide bases for disciplinary action in this State as Dr. Porcaro has failed to cooperate with a Board inquiry by failing to make a proper and timely response by way of appearance or production of documents to the subpoena issued on June 20, 2012, in violation of his duty to cooperate with Board investigations. Such conduct is professional misconduct as

determined by the Board, N.J.S.A. 45:1-21(e), and is a violation of an act or regulation administered by the Board, N.J.S.A. 45:1-21(h).

DISCUSSION

Based on the foregoing findings and conclusions, a Provisional Order of Discipline ("POD") was filed on January 16, 2013. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry unless Respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting Respondent's request for consideration and reasons offered in mitigation of penalty.

In response to the POD, Respondent submitted four consecutive letters, none of which were certified. The first letter, dated January 30, 2013, requested additional time. The second letter, dated February 14, 2013, contained one patient's dental record. The third letter, dated February 18, 2013, informed the Board that Respondent had contacted an attorney regarding one of the patients and that he expected the attorney to submit a letter. In regards to the third patient, Respondent stated that the records were found and he would submit the records by the end of the week [of February

22, 2013]. In the final letter dated February 26, 2013, Respondent offered information on his personal circumstances and asked that his license not be suspended. By April 26, 2013, Respondent provided all the requested records, albeit untimely.

Dr. Porcaro's attorney, Andrea S. Glaser, Esq., in a letter dated April 25, 2013, explained that Dr. Porcaro's failure to respond to the subpoena was due to his family experiencing two traumatic events in between the time of the subpoena and the issuance of the POD; first, his son was a victim of a criminal act between June and August of 2012; second, Dr. Porcaro and his wife, also a partner in their dental practice, decided to end their marriage and their professional partnership. She indicated that these life stressors consumed a significant amount of Dr. Porcaro's time and energy. Respondent acknowledged that said events do not excuse the delay in cooperating, but should be taken into account as mitigating information in assessing the penalty. Dr. Porcaro argues that penalizing him for his six month delay in complying with the Board's investigatory demand is not warranted since the facts and circumstance in the matter did not cause any prejudice to anyone.

The Board finds that not timely cooperating with the Board is a harm in and of itself because when a licensee repeatedly ignores a request for production of patients' records, and/or subpoena to testify, he interferes with the important investigatory function of

the Board and thus has engaged in professional misconduct and has violated a regulation applicable to Board licensees. Furthermore, preceding the issuance of the subpoena, the Board issued multiple requests for production of the records by letters dated October 17, 2011, March 2, 2012, March 13, 2012 and June 1, 2012 and by phone calls on April 10, 2012, May 3, 2012, June 18, 2012 and July 24, 2012 which were ignored as documented by the Executive Director's certification.

While the Board is sympathetic to respondent's mitigating information, the Board finds that imposition of a civil penalty and a reprimand are warranted because Dr. Porcaro's failure to timely cooperate with the Board's investigation caused the Board to expend resources to file a POD and significantly delayed the investigation of this matter. The Board also took note that Respondent's knowledge of the incident involving his son was after the return date of the subpoena and almost a year after the first request by the Board in October 2011. In sum, the Attorney General argues that although the Respondent has indeed presented mitigating circumstances, he has continuing responsibility to be attentive to his patients, his practice, and his licensing Board and that his failure to timely cooperate with the Board warrants a significant sanction. However, now that the records have been provided, albeit untimely, the suspension of Respondent's licence will not take effect.

ACCORDINGLY, IT IS on this 20th day of November, 2013

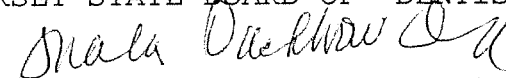
HEREBY ORDERED that:

1. Respondent's conduct of failing to timely respond to a subpoena issued pursuant to N.J.S.A. 45:1-18 is deemed professional misconduct and a failure to cooperate in violation of N.J.S.A. 15:1-21(e) and N.J.A.C. 13:45C-1.3(a)(6), respectively.

2. Respondent shall be assessed a penalty of \$5,000.00, pursuant to N.J.S.A. 45:1-22 and N.J.S.A. 45:1-25 for acts constituting professional misconduct and for violating an act or regulation administered by the Board. The penalty shall be paid by money order or certified check made out to the State of New Jersey and delivered to the Board of Dentistry, P.O. Box 45005, 124 Halsey Street, Sixth Floor, Newark, NJ 07101, no later than 30 days after the entry of this Final Order of Discipline. In the event respondent fails to make a timely payment, a certificate of debt shall be filed and or the Board may institute such other collection procedures.

NEW JERSEY STATE BOARD OF DENTISTRY

By



Sheila Dashkow, D.D.S.
Board President